

ENTERED

June 07, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ANDREW JOSEPH CROSS,
TDCJ # 02111073,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 3:18-CV-0156

MEMORANDUM OPINION AND ORDER

Petitioner Andrew Joseph Cross, an inmate in the Texas Department of Criminal Justice–Correctional Institutions Division (“TDCJ”), has filed a Petition (Dkt. 1) for a federal writ of habeas corpus under 28 U.S.C. § 2254. After considering all of the pleadings and the applicable law as required by Rule 4 of the Rules Governing Section 2254 Cases, the Court dismisses this case for the reasons explained briefly below.

Cross was convicted of burglary on January 6, 2017, in Case No. 80054-CR, 300th District Court of Brazoria County, and is serving a three year sentence. His petition does not challenge his conviction or sentence, nor any other state court judgment. Rather, he complains that he is being refused medical treatment for hepatitis C and that his condition is getting worse (Dkt. 1, at 6). He attaches some medical records from 2017 and 2018. He seeks relief in the form of “treatment” (Dkt. 1, at 7).

Section 2254 authorizes a habeas petition “on behalf of a person in custody pursuant to the judgment of a State court *only* on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.

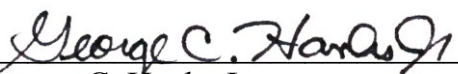
§ 2254(a) (emphasis added). Because Cross does not challenge his underlying conviction or any other state court judgment, Section 2254 does not authorize the relief he seeks, and the Petition (Dkt. 1) will be **dismissed**.

This Court declines to redesignate Petitioner's claims as a civil rights lawsuit under Section 1983, 42 U.S.C. § 1983, because doing so would obligate Petitioner to pay the \$350.00 filing fee. Petitioner must be the one to decide if he wishes to pursue this claim in a separate suit, which would require him to file a complaint on the Section 1983 complaint form. If Petitioner files a separate lawsuit he will be required to either pay the \$350 filing fee in full or to apply to proceed *in forma pauperis* and pay the \$350 in installments as authorized by 28 U.S.C. § 1915.

Based on the foregoing the Court **ORDERS** that the Petition (Dkt. 1) is **DISMISSED** pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

The Clerk will provide copies of this order to the parties.

SIGNED at Galveston, Texas, this 7th day of June, 2018.



George C. Hanks Jr.
United States District Judge